

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STEVEN REID DOUGLAS and	:	No. 3:23cv747
DANIELLE REID DOUGLAS,	:	(Judge Munley)
Plaintiffs	:	
v.	:	(Magistrate Judge Carlson)
	:	
ATRIUM MEDICAL	:	
CORPORATION; MAQUET	:	
CARDIOVASCULAR US SALES,	:	
LLC; and GETTINGE AB,	:	
Defendants	:	

 John ORDER

AND NOW, to wit, this 30 day of September 2024, it is hereby ORDERED as follows:

- 1) The Report and Recommendation (Doc. 40) is **ADOPTED**;
- 2) The plaintiffs' objections/request for interlocutory appeal are **OVERRULED/DENIED**;
- 3) Defendant Atrium Medical Corporation and Maquet Cardiovascular US Sales' motion to dismiss (Doc. 19) is **GRANTED** in part and **DENIED** in part.

The motion to dismiss is **GRANTED** as follows:

- a. Counts I and II of the complaint are **DISMISSED** with prejudice;
- b. Count IV – Breach of Implied Warranty – is **DISMISSED**;

c. Count V – Breach of Express Warranty – is **DISMISSED** without prejudice to the plaintiffs filing an amended complaint within fourteen (14) days from the date of this order which details the specific source of any express warranty and any specific statements made by the defendants, beyond the marketing of the device as safe. If no timely amended complaint is filed, Count V's dismissal will be with prejudice;

d. Count VI – Negligent Misrepresentation is **DISMISSED** without prejudice to the plaintiffs filing an amended complaint within fourteen (14) days from the date of this order which includes specific overt acts or affirmative misrepresentations made by the defendants that go beyond a failure to warn. If no timely amended complaint is filed, Count V's dismissal will be with prejudice;

The motion to dismiss is **DENIED** as follows:

a. The motion to dismiss as to Count III – Negligence, is **DENIED**;
b. The motion to dismiss as to Count VII¹ - Loss of Consortium and Punitive Damages is hereby **DENIED**.

4) Defendant Getinge AB's motion to dismiss (Doc. 31) with regard to personal jurisdiction and improper service is **DENIED**. Defendant Getinge AB may raise the personal jurisdiction issue again, if appropriate, after discovery has

¹ Plaintiffs' complaint lists two counts as Count VI. It appears that Loss of Consortium is intended to be Count VII and the court refers to it as such.

taken place. Additionally, in accordance with the R&R, service upon Defendant Getinge AB is **QUASHED** and the plaintiffs are permitted to effect proper service. It is recommended that plaintiffs obtain a proper address for the corporate headquarters or any registered agent for receipt of service of process and to seek service through the United States Marshals; and

5) This matter is remanded to Magistrate Judge Martin C. Carlson for further pretrial proceedings.

BY THE COURT:

JUDGE JULIA K. MUNLEY
United States District Court